

1 *E-Filed: July 15, 2015*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YUNG K. SO,
Plaintiff,
v.
WOODLAND PROPERTY
HOMEOWNERS ASSOCIATION, et al.,
Defendants.

Case No. 15-cv-01703-HRL

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS THE
COMPLAINT**

Re: Dkt. No. 9

Yung K. So, proceeding pro se, sues Woodland Property Homeowners Association and UNC Community Management for claims arising from water damage to the property located at 1235 Whitfield Court, San Jose, California 95131. Presently before the Court is Defendants' motion to dismiss the complaint. All parties have expressly consented to having all matters proceed before a magistrate judge. A hearing was held on July 14, 2015. Based on the moving and responding papers, as well as the arguments presented at the hearing, the Court grants the motion to dismiss.

BACKGROUND

Plaintiff Yung K. So is the owner of a unit located at 1235 Whitfield Court, San Jose, California 95131, within the Woodlands Property Owners Association development. UNC

Community Management is the management company for Woodlands Property Owners Association. Plaintiff alleges that because of a construction issue relating to the roof and gutter of the property, the property sustained water damage. Plaintiff asserts that Defendants did not compensate him for the necessary repairs to the property. According to the complaint, Plaintiff filed this action through a power of attorney on behalf of his mentally ill brother, who presumably resides in the unit. Although unclear, the complaint appears to allege that Defendants' failure to make repairs to the unit amounted to disability discrimination.

In April 2015, Plaintiff brought suit against Woodlands Property Owners Association and UNC Community Management. The complaint asserts: (1) disability discrimination, in violation of the Fair Housing Act, 42 U.S.C. § 3604; (2) disability discrimination, in violation of the California Government Code; (3) denial of full and equal access to housing accommodations, in violation of the Unruh Act, Cal. Civ. Code § 51 *et seq.*; (4) negligence; and (5) breach of the warranty of habitability. Presently before the Court is Defendants' motion to dismiss the complaint. Dkt. No. 9. Plaintiff filed two oppositions, and Defendants filed a reply. Dkt. Nos. 24, 26, 32.

LEGAL STANDARD

A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the claims in the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is appropriate where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory. *Id.* (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)). In such a motion, all material allegations in the complaint must be taken as true and construed in the light most favorable to the claimant. *Id.* However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Moreover, “the court is

1 not required to accept legal conclusions cast in the form of factual allegations if those conclusions
2 cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d
3 752, 754-55 (9th Cir. 1994).

4 DISCUSSION

5 I. CLAIM FOR DISABILITY DISCRIMINATION UNDER 42 U.S.C. § 3604

6 Plaintiff’s disability discrimination claim is barred by the applicable statute of limitations.
7 Under 42 U.S.C. § 3613(a)(1)(A), “[a]n aggrieved person may commence a civil action in an
8 appropriate United States district court or State court not later than 2 years after the occurrence or
9 the termination of an alleged discriminatory housing practice, or the breach of a conciliation
10 agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief
11 with respect to such discriminatory housing practice or breach.”

12 Plaintiff alleges that on November 8, 2003, he contacted Woodland Property Owners
13 informing them that the “gutters and roof at 1235 Whitfield Ct., San Jose, CA 95131 was leaking
14 water into the house.” Compl. ¶ 13. Plaintiff contacted Woodland Property Owners again around
15 March 2004, “informing them that the gutters and roof at 1235 Whitfield Ct. San Jose, Ca 95131
16 were still leaking” and “that the leaking water is causing damage to the interior walls and window
17 frames.” *Id.* ¶ 14. In December 2004, Plaintiff “contacted defendant Woodland Property Owners
18 Association . . . again informing them that the gutters and roof at 1235 Whitfield Ct. San Jose, Ca
19 95131 were still leaking” and informed Defendant about the damage to “the interior walls and
20 window frames.” *Id.* ¶ 15. In January 2011, Plaintiff “faxed to defendant Woodland Property
21 Owners Association an estimate from AA Handyman builders Network INC to repair the leaking
22 gutter, tear out sections of the interior walls, tear out carpet and padding, and remove/replace mold
23 and fungus infested carpet in various locations.” *Id.* ¶ 16. Plaintiff also contacted Woodland
24 Property Owners throughout 2011 to 2013. *Id.* ¶ 17. These allegations reveal that Plaintiff notified
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1 Woodland Property Owners of the water leak beginning in 2003. Thus, Defendants' alleged
2 failure to repair the water leak began in 2003. This action was not filed until April 2015, and it is
3 therefore barred by the applicable statute of limitations.

4 Plaintiff argues that his claims "arise through a perpetual water leak in the walls of the
5 home in question, with defendant['s] full knowledge. It took years for this leak to reveal it's [sic]
6 damage, i.e. mold and mildew." Opp. at 2. Plaintiff "did not become aware of the resulting mold
7 and mildew until 2013–2014." *Id.*

8 To the extent Plaintiff is attempting to argue that the general federal rule or California's
9 delayed discovery rule tolls the limitation period, this argument fails. Under the general federal
10 rule, the limitations period begins to run when the plaintiff knows or has reason to know of the
11 injury which is the basis of the cause of action. *Mangum v. Action Collection Serv., Inc.*, 575 F.3d
12 935, 940 (9th Cir. 2009). In California, "under the delayed discovery rule, a cause of action
13 accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an
14 injury and some wrongful cause, unless the plaintiff pleads and proves that a reasonable
15 investigation at that time would not have revealed a factual basis for that particular cause of
16 action. In that case, the statute of limitations for that cause of action will be tolled until such time
17 as a reasonable investigation would have revealed its factual basis." *Fox v. Ethicon Endo-Surgery,*
18 *Inc.*, 35 Cal. 4th 797, 803 (2005).

21 Neither the general federal rule nor California's delayed discovery rule applies here. As
22 explained above, Plaintiff's allegations reveal that he notified Woodland Property Owners about
23 the water leak beginning in 2003, and notified Defendant of the damage caused by the water leak
24 in 2004 and again in 2011. In 2011, Plaintiff specifically mentioned the mold and fungus caused
25 by the water leak. Compl. ¶ 16. That Plaintiff continued to contact Defendant about the
26 increasing damage caused by the water leak does not toll the statute of limitations. Plaintiff was
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1 aware of the damage caused by the water leak as soon as 2004, and no later than 2011.

2 Accordingly, Plaintiff's disability discrimination claim is barred by the applicable statute
3 of limitations.

4 **II. REMAINING CLAIMS**

5 Where all federal claims are dismissed in an action containing both federal and state law
6 claims, a federal court may decline to exercise supplemental jurisdiction over the remaining state
7 law claims. 28 U.S.C. § 1367. "With respect to supplemental jurisdiction in particular, a federal
8 court has subject-matter jurisdiction over specified state-law claims, which it may (or may not)
9 choose to exercise. A district court's decision whether to exercise that jurisdiction after dismissing
10 every claim over which it had original jurisdiction is purely discretionary." *Carlsbad Tech., Inc. v.*
11 *HIF BIO, Inc.*, 556 U.S. 635, 639 (2009) (citations omitted).

12 Here, Plaintiff's claim for disability discrimination under 42 U.S.C. § 3604 is being
13 dismissed. No other federal claims remain. Therefore, the Court declines to exercise supplemental
14 jurisdiction over the remaining claims.

15 **III. LEAVE TO AMEND**

16 When amendment would be futile, a district court may dismiss a complaint without leave
17 to amend. *See Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987).
18 Here, it is clear from Plaintiff's complaint that he was aware of the water leak in 2003, and he was
19 aware of the damage caused by the water leak as soon as 2004, and no later than 2011. The court
20 finds that amendment to the complaint would be futile. Accordingly, the court declines to grant
21 leave to amend.

22 **CONCLUSION**

23 For the reasons stated above, Defendants' motion to dismiss is granted. Plaintiff's
24 complaint is dismissed. Because Plaintiff's state law claims are dismissed without prejudice,

1 Plaintiff may bring the state law claims in state court.
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3 The Clerk shall close the file.
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5 **IT IS SO ORDERED.**
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7 Dated: July 15, 2015
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11 HOWARD R. LLOYD
12 United States Magistrate Judge
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